

DIGESTS OF UNPUBLISHED DECISIONS OF

THE NATIONAL LABOR RELATIONS BOARD

UNION/EMPLOYER DIGEST SECTION



FEBRUARY 1985

032552

UNITED STATES GENERAL ACCOUNTING OFFICE

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February 1985

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Compiled in the
Index-Digest Section
Office of the General Counsel
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DECISIONS OVERRULED, MODIFIED OR DISTINGUISHED

B-184155, Feb. 26, 1976 distinguished by B-216048.2,
Feb. 11, 1985.

B-207795, Dec. 2, 1982 affirmed by B-207795, Feb. 6, 1985.

GENERAL GOVERNMENT MATTERS
APPROPRIATIONS AND MISCELLANEOUS

B-214615 Feb. 4, 1985

APPROPRIATIONS--PANAMA CANAL COMMISSION--AVAILABILITY--
CLAIMS, ETC. AGAINST PANAMA CANAL COMPANY

Section 1321 of the Panama Canal Act of 1979 (codified at 22 U.S.C. 3731) (Act) authorizes the Panama Canal Commission to reimburse the Department of Defense (DOD) for expenses incurred in providing mortuary and burial services to persons who were eligible to receive such services under the health care program formerly conducted by the Canal Zone Government. Subparagraph 1321 (c) of the Act provides that funds appropriated to DOD shall be available for conducting health care activities carried out by the Canal Zone Government before the effective date of the Act and the Act's legislative history indicates that mortuary and burial expenses were intended to be included. Subparagraph 1321(d) specifically makes Commission funds available to reimburse DOD for expenses incurred in conducting such activities.

B-217522 Feb. 4, 1985

ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS
PAYMENTS--WITHOUT FAULT OR NEGLIGENCE

Relief is granted under 31 U.S.C. 3527 to an Army accountable officer for an erroneous payment made by a cashier under his command upon a showing that he maintained an adequate system of procedures and controls for the safeguard of Government funds.

B-217279 Feb. 5, 1985

ENERGY--DEPARTMENT OF ENERGY--SECRETARY--AUTHORITY--
EMPLOYEE ASSIGNMENTS

On the basis of legislative history, 42 U.S.C. 7133 should be construed to grant the Secretary of DOE discretion to assign and reassign the eleven listed and other unlisted functions contained in 42 U.S.C.

7133(a) among the eight Assistant Secretaries authorized by the statute. Although the statute requires the President to identify the functions to be performed by each nominee for Assistant Secretary prior to submitting the name to the Senate for confirmation, this does not negate the Secretary's authority to subsequently assign and reassign the functions of the Assistant Secretaries.

Although the Secretary of Energy has authority to assign and reassign the functions of the eight Assistant Secretaries authorized under 42 U.S.C. 7133(a), he must assign all eleven functions listed in that provision to one or more of the Assistant Secretaries. Functions required by that provision to be performed by an Assistant Secretary may not be assigned to other DOE officials instead of Assistant Secretaries, because that provision is construed as mandatory.

The provisions of 42 U.S.C. 7133(a) state "There shall be in the Department [of Energy] eight Assistant Secretaries," which should be construed as mandatory, requiring the Secretary to maintain the eight Assistant Secretary positions at all times.

B-185591 Feb. 7, 1985

*BOOKS AND PERIODICALS--APPROPRIATION AVAILABILITY--EXPENSES
INCIDENT TO SPECIFIC PURPOSES--NECESSARY EXPENSES*

Federal agencies and departments may purchase subscriptions to periodicals upon a determination by an appropriate official that the purchase is a necessary expense of the agency, which is the same criterion governing other uses of appropriated funds generally.

B-217440 Feb. 13, 1985

*DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT
OF BAD FAITH OR NEGLIGENCE*

Relief granted to disbursing officer and cashier under section 3527(c) of title 31 of the United States Code for improper payment of travel voucher

where the disbursing officer maintained an adequate system of procedures to safeguard the funds for which he was accountable, the cashier was complying with those procedures when processing the travel vouchers and where the improper payment resulted from criminal activity over which neither disbursing officer nor cashier had any control.

B-212976 Feb. 27, 1985

PAYMENTS--PROMPT PAYMENT ACT--DATE OF PAYMENT

Replying to criticisms by OMB of 63 Comp. Gen. 391 (1984), in which agencies were counseled, in conformance with the Prompt Payment Act, not to date and mail payments right on the due date because normal mail delays could generally result in payments arriving late, GAO points out that its advice is wholly consistent with OMB Circular A-125 and the Treasury Fiscal Requirements Manual, as presently constituted.

Personnel Law: Civilian Personnel

February 1985

B-201183 Feb. 1, 1985

*ATTORNEYS--FEES--AGENCY AUTHORITY TO AWARD--CIVIL RIGHTS
ACT COMPLAINTS*

There is no legal authority to reimburse a former employee of the Department of Agriculture for legal fees incurred in connection with a discrimination complaint in which he was named as an alleged discriminating official.

B-199104 Feb. 6, 1985

*FEDERAL LABOR RELATIONS AUTHORITY--JURISDICTION--UNFAIR
LABOR PRACTICES*

Employee claims that agency's refusal to allow him to perform two temporary duty assignments constituted an unfair labor practice under 5 U.S.C. 7116 (1982), and that he is entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. This Office may not consider allegations concerning unfair labor practices since the Federal Labor Relations Authority has exclusive jurisdiction to decide such complaints. In any event, the employee is not entitled to per diem since that allowance is authorized only if an employee actually performs official travel. Furthermore, the employee is not entitled to overtime and holiday premium pay absent evidence that he performed compensable work.

B-207795 Feb. 6, 1985

*COMPENSATION--OVERTIME--TRAVELTIME--ADMINISTRATIVELY
CONTROLLABLE*

The act of scheduling travel for an employee so that the schedule is consistent with travel regulations is not an "event which could not be scheduled or controlled administratively" for purposes of 5 U.S.C. 5542(b)(2)(B)(iv). Therefore, travel connected with such scheduling is not considered "hours of employment" for overtime pay.

B-207795 Feb. 6, 1985 - Con.

COMPENSATION--OVERTIME--TRAVELTIME--ARDUOUS CONDITIONS

A period of long hours of travel on a commercial airliner is not considered travel under "arduous conditions" for overtime compensation under 5 U.S.C. 5542(b)(2)(B)(iii), as that term is interpreted by the Office of Personnel Management, the agency charged with the administration of the overtime statute. Thomas G. Hickey, B-207795, December 2, 1982, affirmed.

B-216579 Feb. 6, 1985

COMPENSATION--RATES--HIGHEST PREVIOUS RATE--TRANSFERS--
RATE APPLICABLE

Former employee of the Smithsonian Science Information Exchange which is not a mixed ownership corporation is not entitled to receive the benefits of the highest previous rate rule under 5 U.S.C. 5334, and 5 C.F.R. 531.203(c), upon obtaining a position at the Internal Revenue Service. She was paid by private trust funds of the SSIE and not from wholly appropriated funds and she is therefore not covered by the highest previous rate rule. 5 U.S.C. 5102(c)(14), 5331 and 5334.

B-215055 Feb. 7, 1985

OFFICERS AND EMPLOYEES--TRANSFERS--CANCELLATION--GOVERNMENT
LIABILITY

Upon notification of proposed transfer to a new permanent duty station, employee purchased a mobile home for use as temporary quarters at the new location and claims costs incurred in obtaining a mortgage, electrical hook-ups, etc. Employee's transfer was canceled and he never vacated his residence at his old permanent duty station and never reported for duty at the new location. Therefore, employee is not entitled to reimbursement for any temporary quarters subsistence expenses. Further, even in the event of a canceled transfer, such items are reimbursable only if incurred in connection with the acquisition of a permanent residence at the new location.

B-216573 Feb. 11, 1985

COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--
UNJUSTIFIED OR UNWARRANTED PERSONNEL ACTION--ALLEGATION
NOT SUBSTANTIATED

A civilian employee was separated for voluntary retirement but was later restored because he refused to waive retired military pay to qualify for a civil service annuity. The separation was not an unjustified or unwarranted personnel action entitling him to backpay since the personnel office stated that he was informed prior to separation that he had to waive his military retirement. Although he contends he was not so advised he should have known there was a question about the matter. Further, the agency position must be accepted when there is an irreconcilable difference between the claimant and the agency.

B-214659 Feb. 12, 1985

COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--LEAVE
MATTERS--LUMP-SUM LEAVE PAYMENTS DEDUCTION

Restored air traffic controller objects to agency's deduction of lump-sum annual leave payment and refunded retirement contributions from backpay award. Deductions are required since the employee was reinstated under the Back Pay Act as if the removal never occurred, and thus there is no basis for payment of lump-sum annual leave or refund of retirement contributions.

COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--PREMIUM
PAY ENTITLEMENT

Restored air traffic controller claims entitlement to premium pay for on-the-job training supervision during period of removal. Claim is denied since she was not qualified as a journeyman controller who could be selected to perform on-the-job training prior to her separation and since selection for such training is not a right nor is it guaranteed.

B-214659 Feb. 12, 1985 - Con.

COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--
PROMOTIONS--DENIAL

Restored air traffic controller claims entitlement to retroactive promotion during period of removal. Claim is denied since the facts do not clearly establish she would have completed training and certification requirements necessary for promotion to next grade level.

GENERAL ACCOUNTING OFFICE--ABATEMENT OF ACTION PENDING
COURT ACTION

Restored air traffic controller claims entitlement to overtime compensation as part of backpay award. Proper computation of overtime is the subject of lawsuit pending in federal court and in an action before the Merit Systems Protection Board (MSPB). We will defer action on this claim pending resolution of the actions in federal court and before the MSPB.

B-216090 Feb. 12, 1985

OFFICERS AND EMPLOYEES--DE FACTO--COMPENSATION--REASONABLE
VALUE OF SERVICES PERFORMED

An individual was offered a position as an expert for a presidential commission under 5 U.S.C. 3109. He accepted and began working immediately at the request of the executive director of the commission pending completion of hiring procedures. The individual was never actually appointed because he subsequently rejected a formal offer of employment. However, since he began work in good faith and under color of authority, he is to be considered a de facto employee and may be paid the reasonable value of the services performed while in that status, the value of which may be established at the rate of compensation set for the expert position.

An individual, as a de facto employee, may be paid the reasonable value of the services rendered while in that status. However, if he is later notified, becomes aware, or has reason to believe that he has not been properly

appointed or that he has no authority to perform the duties of the position, he ceases to be a de facto employee. It cannot be said that his work continuation is in good faith and sufficiently under color of authority so as to permit payment for services rendered beyond the date of notice.

B-214519 Feb. 19, 1985

ORDERS--AMENDMENT--RETROACTIVE--TRAVEL COMPLETED

Two ambassadors resigned their positions and returned to Washington, D.C., pending nomination and confirmation for new duty posts. Under existing agency procedures the ambassadors were transferred to Washington after 50 days, even though both were shortly thereafter transferred to their new duty posts. Where the ambassadors claim only temporary duty expenses while in Washington and where the agency did not intend to transfer these two ambassadors to Washington between assignments, we will not object to the agency issuing amended travel orders treating the entire period in Washington as temporary duty.

B-214610 Feb. 19, 1985

TRANSPORTATION--VESSELS--FOREIGN--REIMBURSEMENT

Reimbursement for expenses of shipping POV on a foreign-flag vessel, here the Queen Elizabeth II, is prohibited under section 901 of the Merchant Marine Act of 1936, 46 U.S.C. 1241(a) (1982), which requires justification for the use of a foreign-flag vessel where, as here, American-flag vessels were available. This includes its exclusion from use on a constructive cost basis since those items which would not be allowed on an actual basis cannot be used for comparison on a constructive basis.

TRAVEL EXPENSES--CONSTRUCTIVE TRAVEL COSTS--EXCESS BAGGAGE

Paragraph 1-4.3b of the FTR is sufficiently broad in scope to allow reimbursement of constructive cost of excess baggage when such charge was authorized, and covers case where, as here, there has been a change

in the mode of transportation used. However, claim is denied because the claimant did not document the weight or cost of what would be deemed excess baggage, but merely estimated the costs involved.

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--CONSTRUCTIVE TRAVEL COSTS--LESS THAN FIRST-CLASS FARE

Under GAO's internal travel policy, PCS air travel by an employee and his family is limited to "coach class" fare. Therefore, "coach class" is the proper measure for constructive cost reimbursement.

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--CONSTRUCTIVE TRAVEL COSTS--PAYMENT BASIS

Employee claims reimbursement on the basis of constructive cost where he and his family performed permanent change-of-station (PCS) travel from Frankfurt, Federal Republic of Germany, to Denver, Colorado, by mode of transportation other than that authorized, and by an indirect, i.e., circuitous or not usually traveled route. Instead of flying, they took the Queen Elizabeth II, a foreign-flag ocean vessel, to New York and drove by privately-owned vehicle (POV) from New York to Denver. Employee's constructive cost comparison should be based only on the portion of his trip from Frankfurt to New York since Federal Travel Regulations (FTR) specify that POV use for portion of travel from New York to Denver is deemed to be advantageous to the Government.

B-216756 Feb. 19, 1985

COMPENSATION--OVERTIME--ADMINISTRATIVE WORKWEEK

Although the employee contends otherwise, there is no statutory or regulatory provision which requires scheduling of an employee's two consecutive days off at the end of his tour of duty.

COMPENSATION--OVERTIME--WORKWEEK CHANGES

A former employee of the Coast Guard whose tour of duty was changed from a Monday through Friday schedule to a Sunday through Wednesday and Saturday schedule,

with Thursday and Friday off, is not entitled to overtime compensation for the Sunday he worked at the time of the schedule change. Since the Coast Guard administrative workweek extended from 0000 hours Sunday morning through 2400 hours Saturday night, he did not work more than 5 days or 40 hours in any one administrative workweek.

B-217442 Feb. 19, 1985

COMPENSATION--SEVERANCE PAY--ELIGIBILITY--INVOLUNTARY SEPARATION

The severance pay provisions of 5 U.S.C. 5595 and the discontinued service retirement provisions of 5 U.S.C. 8336(d) contain similar standards, in that both authorize payments to Federal employees separated from their positions involuntarily, except by removal for cause on charges of misconduct or delinquency. While the Comptroller General has authority to decide questions relating to severance pay, the adjudication of claims for discontinued service retirement annuities is reserved by law to the Office of Personnel Management.

RETIREMENT--CIVILIAN--INVOLUNTARY RETIREMENT, ETC.--DISCONTINUED SERVICE RETIREMENT

The Comptroller General has no basis to question the correctness of the position adopted by the National Guard Bureau and the Office of Personnel Management that a technician may not gain eligibility for an immediate "discontinued service" retirement annuity through a voluntary failure to meet military weight standards resulting in his loss of military status and thus his civilian position. The Office of Personnel Management adjudicates whether the failure to lose weight was voluntary or involuntary, e.g., the result of a medical condition.

B-216204 Feb. 22, 1985

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
HUSBAND AND WIFE DIVORCED, ETC.--HOUSE SALE

A transferred employee who was divorced from his wife after reporting for duty at his new duty station but prior to the sale of his residence at his old duty station may be reimbursed for only one-half of the real estate expenses incurred since his wife, with whom he held title to the residence, was not a member of his immediate family at the time of settlement. See Alan Wood, B-216205, decided today.

B-216835 Feb. 22, 1985

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
HUSBAND AND WIFE DIVORCED, ETC.--HOUSE SALE

A transferred employee was reimbursed for only 50 percent of his claimed real estate expenses because he was divorced from his wife, with whom he held title to the residence, prior to the date of settlement. The employee contends that the date to be used to determine eligibility for reimbursement of such expenses is when the employee is notified of his impending transfer. The settlement date is the appropriate time to determine if an individual with whom an employee holds title is a member of his immediate family. Therefore, the employee may be reimbursed for only one-half of the otherwise allowable expenses.

B-214477 Feb. 28, 1985

COMPENSATION--PREMIUM PAY--BASIC COMPENSATION DETERMINATION--
STANDBY PREMIUM PAY

We were asked by Congressman Tony P. Hall to address issues raised by a constituent who is a firefighter employed by the Air Force. Our response discusses in general the payment of premium pay to firefighters and the payment of overtime to firefighters under title 5 and the Fair Labor Standards Act including situations where the employee takes leave, does not work scheduled overtime, or works unscheduled overtime. The letter also discusses alternative leave accounting procedures where employees work unusual tours of duty.

Personnel Law: Civilian Personnel

February 1985

B-203903 Feb. 11, 1985

PAY--RETIRED--SURVIVOR BENEFIT PLAN--SPOUSE--EXCLUDED

A surviving spouse who does not qualify as an eligible widow for purposes of the Survivor Benefit Plan may not receive an annuity under the Plan on the basis that she had an insurable interest in her spouse since coverage for her was available only as a spouse and coverage was elected for her as a spouse, not as an individual with an insurable interest. The member's election to participate in the Plan was made 5 years after his initial eligibility to participate in the Plan (under section 3(b) of Pub. Law 92-425) had expired, and was based on his later marriage. In such a case, he was eligible to elect coverage for his newly acquired spouse, not for a person with an insurable interest.

The mere fact that a retired officer designated his spouse as his sole beneficiary when he elected to participate in the Survivor Benefit Plan, is not a valid basis for a claim for annuity under the Plan unless the surviving spouse meets the statutory qualifications of the Plan. One of the qualifications a spouse must meet, if the spouse and the retiree were married after the retiree retired and his initial eligibility to elect coverage in the Plan expired, is that the retiree and the spouse be married at least 1 year prior to the retiree's death.

Where a surviving spouse does not qualify as a "widow" for Survivor Benefit Plan purposes because she and the retiree were married after he was retired but were not married for at least 1 year prior to the retiree's death, a claim that they were married under common law prior to their official ceremonial marriage is not sufficient unless the common law marriage has been proven. Where the parties allegedly held themselves out as husband and wife while residing in states where common law marriages may not be legally contracted, but traveled

for visits to or passed through on an airplane trip jurisdictions where such marriages may be legally contracted, the existence of a common law marriage is too doubtful for the Comptroller General to recognize it.

A Navy officer retired in 1970, married in 1978 and 2 months later elected coverage under the Survivor Benefit Plan for his spouse. He died less than 1 year after the marriage. Since they were married less than 1 year before his death the spouse does not qualify as an eligible widow for an annuity under the Plan. Allegations that they had entered into a common law marriage sometime in 1973-1975, prior to the 1978 ceremonial marriage, even if proven would not qualify her as the widow because the retiree must have elected coverage under the Plan within 1 year after his marriage which, if the common law marriage were valid, would have expired at the latest in 1976, over a year before he made the election.

B-216578 Feb. 19, 1985

*MILITARY PERSONNEL--RESERVISTS--DEATH OR INJURY--DISABILITY
BENEFITS--AUTHORITY OF SECRETARIES TO DECIDE*

By statute, the Secretary of the appropriate military or naval department has all powers, functions, and duties relative to determinations of service members' fitness for duty and their percentage of disability, if any. Thus, the Comptroller General has no basis to question a Navy Department action assigning a Marine Corps reservist a permanent 10-percent disability rating and separating him from service with severance pay, notwithstanding the reservist's contention that his disability should have been rated at 30 percent or more and that he should therefore have been awarded a disability retirement.

*PAY--ACTIVE DUTY--RESERVISTS--INJURED IN LINE OF DUTY--
PAY AND LEAVE ENTITLEMENT*

Marine Corps reservist injured while performing
2 weeks of required annual training became

entitled by specific provision of statute to payment of amounts equal to the active duty pay and allowances of a member of the Regular Marine Corps during the subsequent period of disability. The reservist was not actually on active duty during that period, however. Hence, there is no basis to question determination made by military authorities that he was not entitled to the additional benefits that accrue to service members ordered to active duty for more than 30 days, including coverage for dependents under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

PAY--ENTITLEMENT--BASED ON APPLICABLE LAWS

It is fundamental that the entitlement of service members to pay is wholly dependent upon rights prescribed by statute. Hence, Marine Corps reservist injured during annual 2-week training duty period was entitled to military pay and allowances authorized by statute for subsequent period of disability, but was not entitled to additional payments equal to civilian earnings he claimed to have lost because of the injury since such additional payments are not authorized by statute.

PROCUREMENT LAW

February 1985

B-215537 Feb. 1, 1985 85-1 CPD 123
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest based on alleged deficiencies which were apparent to protester before bid opening is untimely under GAO Bid Protest Procedures, 21.2(b)(1), when filed with agency after bid opening even though protest with GAO was filed within 10 working days after protester learned of agency's denial of its protest.

B-216673.2, et al. Feb. 1, 1985 85-1 CPD 124
CONTRACTS--PROTESTS--COURT ACTION--DISMISSAL

GAO will dismiss protests concerning evaluation procedures and criteria that include allegations which are identical or similar to contentions made by another firm when that firm is seeking permanent relief in U.S. District Court. Since protesters' possible remedies are the same as could be given in the lawsuit, the substance of the protests are also at issue, even though the protesters are not parties to the suit and the protest details vary slightly.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

GAO will dismiss protests alleging that an agency improperly failed to set aside an entire procurement for small business when the protests are filed after the closing date for receipt of initial proposals. In any event, the decision to set aside a particular procurement is essentially within the discretion of the contracting officer, and, with certain exceptions not applicable here, nothing in the Small Business Act makes it mandatory to set aside any particular procurement.

B-216728 Feb. 1, 1985 85-1 CPD 125
BIDS--MISTAKES--CORRECTION--DENIAL

Agency's refusal to permit upward correction of the protester's low bid is reasonable and will not be disturbed by GAO where: (1) the protester's work-sheets show that a higher overhead rate was applied to roofing work allegedly omitted from the original bid price than was applied to roofing work included in the original bid price; (2) the correction requested would bring the protester's bid to within 2.5 percent and \$6,158 of the next low bid; and (3) the correction would increase the original bid by 50 percent.

B-216801 Feb. 1, 1985 85-1 CPD 126
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--NO BASIS FOR RELIEF--DISCLOSURE OF PROPRIETARY INFORMATION, ETC.

An allegation that an agency's inadvertent disclosure of the protester's proprietary information on one procurement gave another offeror a possible unfair competitive advantage on a different similar procurement is dismissed since the protest does not provide a basis upon which GAO can grant relief.

B-218042 Feb. 1, 1985 85-1 CPD 127
BIDS--COMPETITIVE SYSTEM--ORAL ADVICE ERRONEOUS--INVITATION FOR BIDS--INTERPRETATION

When a solicitation expressly cautions bidders against relying upon oral advice from agency personnel, bidders who ignore the admonition and rely upon advice which later proves to be erroneous must suffer the consequences. Even if the protester was misled to its detriment, such erroneous advice neither binds the agency nor requires the submission of new bids.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--DISCOUNT TERMS

The new Federal Acquisition Regulation, in accord with the final revisions of the now-superseded Federal Procurement Regulations, prohibits the

government from considering prompt payment discounts when evaluating bids. Thus, a protester cannot successfully argue either that it had no knowledge of this prohibition, or that the agency would be acting properly in now accepting its offered discount, since publication of the regulatory provision in the Federal Register has placed the contracting community on at least constructive notice of its existence.

*B-215704 Feb. 4, 1985 85-1 CPD 130
BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS*

The requirement that a bidder be an authorized dealer of a particular company is a definitive responsibility criterion, and failure to meet it does not justify rejection of bid as nonresponsive.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF
COMPETENCY REQUIREMENT*

A negative determination of responsibility of a small business, based on the bidder's failure to meet a definitive responsibility criterion, must be referred to the Small Business Administration under the Certificate of Competency procedures.

*B-215745 Feb. 4, 1985 85-1 CPD 131
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING*

A grantee's determination that proposed equipment supplier is nonresponsible is unobjectionable where there is no allegation of bad faith and record shows that grantee's investigation into equipment supplier's manufacturing background resulted in a finding of uncertainty concerning whether equipment supplier could furnish equipment capable of meeting the grantee's needs as specified in the solicitation.

B-215745 Feb. 4, 1985 85-1 CPD 131 - Con.
CONTRACTS--GRANT-FUNDED PROCUREMENTS--GENERAL ACCOUNTING
OFFICE REVIEW--SIGNIFICANT FEDERAL FUNDS REQUIREMENT

GAO will consider a complaint against Town of Linden, Indiana, procurement where federal grant funds involved in the procurement are substantial both as to percentage of contract price and dollar amount.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

An assertion of bias on the part of a grantee will not be considered where not supported by substantive evidence.

B-215873 Feb. 4, 1985 85-1 CPD 132
BIDS--EVALUATION--TECHNICAL ADEQUACY--ADMINISTRATIVE
DETERMINATION

Protest that agency unduly restricted competition in determining that hopper dredge was required to perform work is denied where protester disagrees with agency's technical conclusions but has not shown that the agency's conclusions are unreasonable. Where the procuring agency has established prima facie support for the necessity for specifications which are alleged to be unduly restrictive, the protester's disagreement with the agency's technical conclusions does not establish that the specifications are unreasonable.

B-216398 Feb. 4, 1985 85-1 CPD 133
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Protest against agency's refusal to extend due date for submission of revised proposals in the first step of a two-step procurement is denied where the agency obtained adequate competition and, ultimately, reasonable prices, and the protester does not allege that the agency deliberately attempted to preclude the protester from submitting a proposal.

B-216519 Feb. 4, 1985 85-1 CPD 135
CONTRACTS--REQUESTS FOR QUOTATIONS--CANCELLATION

Cancellation of RFQ issued under small purchase procedures is proper where agency determines that amount involved will exceed authorized ceiling for use of small purchase procedures.

B-216994.2 Feb. 4, 1985 85-1 CPD 136
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Request for reconsideration is denied where protester raises no new facts or legal arguments which were not previously considered while the initial protest was pending.

B-212859 Feb. 5, 1985 85-1 CPD 138
CONTRACTS--COMPETITIVE SYSTEM--RESTRICTIONS ON COMPETITION--
GEOGRAPHIC

GAO affirms prior decision permitting Government Printing Office to conduct 6-month test in order to compare geographically restricted procurements with non-geographically restricted procurements when request for reconsideration alleges in general terms, but does not show, that GPO already has sufficient information to show that restrictions are not justified.

B-216715 Feb. 5, 1985 85-1 CPD 139
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

There is no legal basis to object to acceptance of possibly below-cost bid by grantee.

B-217066 Feb. 5, 1985 85-1 CPD 140
BIDS--MULTIPLE--PROPRIETY

GAO will not consider on the merits a protest in which it is alleged that a number of bidders are ineligible for award for a variety of reasons but the protester does not identify which

bidders are the subject of its allegations nor to which bidder each allegation applies.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Contracting agency's issuance of an amendment to a solicitation which advised of the rejection of the sole bid received and the resolicitation of the procurement constitutes adverse agency action on protest against the rejection of that bid previously filed with the agency and subsequent protest filed with GAO over 1 month later is untimely.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging improprieties apparent in an invitation for bids which was not filed until after bid opening is untimely.

*B-217178, B-217388 Feb. 5, 1985 85-1 CPD 141
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Protests of solicitation restrictions filed by consultant who declines to identify its clients, on behalf of which protests were allegedly filed, are dismissed because under the circumstances the protester is not an interested party.

*B-217264.2 Feb. 5, 1985 85-1 CPD 142
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

Protest requesting award of a contract under an advertised procurement to a woman-owned business on the basis of a "constructive" tie bid has no basis in law and is, therefore, summarily denied.

B-217264.2 Feb. 5, 1985 85-1 CPD 142 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
AUTHORITY TO WITHHOLD AWARD

Since GAO has no authority to order withholding of award pending determination of low bidder's small business size status by the SBA, protest requesting such relief is dismissed.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
STATUS OF BIDDERS

Determination of size status of a business for purposes of set-aside eligibility is a matter for decision by the Small Business Administration, and GAO will not consider a size status protest in the absence of a showing that the contracting officer has failed to follow regulations in referring the protest to the SBA.

B-217503 Feb. 5, 1985 85-1 CPD 143
BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS--BIDDER ABILITY
TO PERFORM

Allegation that contract awardee is unable to perform because of a below-cost bid is a matter of responsibility, not responsiveness.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review an agency's affirmative determination of responsibility in the absence of a showing of possible fraud or bad faith, or that the definitive responsibility criteria of the solicitation were not met.

B-218060 Feb. 5, 1985 85-1 CPD 144
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Assuming that a protest concerning an alleged impropriety apparent in an invitation for bids was timely filed with the agency before bid

opening, a subsequent protest to GAO filed more than 10 days after initial adverse agency action, the opening of bids, is untimely. Alternatively, a protest against an alleged impropriety in the solicitation first filed with the agency or GAO after bid opening is untimely.

B-215175 Feb. 6, 1985 85-1 CPD 145

CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR

In negotiated procurements there is no requirement that award be made on the basis of the lowest cost. The procuring activity has the discretion to select a higher rated technical proposal instead of a low rated, lower cost proposal if doing so is consistent with the evaluation scheme in the solicitation. Consequently, the protester is not automatically entitled to award merely because he submitted the lowest cost proposal.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--BASIS FOR EVALUATION--INFORMATION CONTAINED IN PROPOSAL v. THAT DERIVED FROM PRE-AWARD SURVEY, ETC.

No matter how low in price and capable an offeror may be, technical evaluations are based on the information submitted in proposals.

CONTRACTS--NEGOTIATION--TECHNICAL EVALUATION PANEL--MEMBERS--QUALIFICATIONS

GAO will not review the qualifications of agency technical evaluation panel members absent a showing of fraud or conflict of interest.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging defect in RFP must be filed prior to the closing date set for receipt of proposals.

B-215426 Feb. 6, 1985 85-1 CPD 146
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION

Fact that some individual evaluators' ratings did not agree with final ratings is not sufficient to discredit evaluation because evaluators' ratings were only initial input into final evaluation, and individual evaluators did not have access to entire proposal in making judgments.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--SLIGHT INACCURACIES IN COMMENTS

Fact that individual evaluators stated that protester's proposal did not evidence understanding of an area in which its technical approach was rated susceptible of being made acceptable is not necessarily an inconsistency. A rating of "susceptible" evidences a deficiency and evaluators may well have thought that the deficiency in technical approach was caused by a lack of full understanding of the requirements.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

Agency technical evaluation that concluded that protester's proposal was technically unacceptable is reasonable where protester's proposal did not meet some requirements and needed substantial clarification in other areas. Even though protester's proposal was not grossly deficient, decision to reject proposal without discussions was reasonable because protester was sole offeror and competition would not be enhanced by resolving doubt in favor of conducting discussions with protester. On the contrary, competition is enhanced by strict application of rules of technical acceptability.

B-215426 Feb. 6, 1985 85-1 CPD 146 - Con.
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
QUESTIONS FOUND NOT MOOT, ACADEMIC, ETC.

Protest by sole offeror that its proposal was improperly found to be technically unacceptable is not rendered academic by agency's resolicitation for requirement with relaxed specifications, where only reason for resolicitation is that no one in industry, including protester, could meet specifications of initial solicitation.

B-216464 Feb. 6, 1985 85-1 CPD 147
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
UNDUE RESTRICTION

Solicitation which specifies metallic pipe for an underground steam distribution system, thereby excluding offer of nonmetallic systems, is unduly restrictive, where the contracting agency contends only that it does not require a nonmetallic system, but neither alleges nor shows that a nonmetallic system is not satisfactory for the intended purpose or that a metallic system otherwise is necessary.

B-217036 Feb. 6, 1985 85-1 CPD 148
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

Claims that offeror cannot provide offered product or meet delivery schedule are questions of responsibility, which GAO does not review except in limited circumstances not present here.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATION--
AMBIGUOUS--ALLEGATION NOT SUSTAINED

By merely contending that salient characteristics could be interpreted several ways and that common meaning does not include approach proposed by awardee, protester did not show that description of salient characteristic of brand name item was ambiguous or unreasonably interpreted by procuring agency.

B-218079 Feb. 6, 1985 85-1 CPD 149
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE

Bidder's failure to acknowledge material amendments not mailed to it because of the agency's clerical error renders the bid nonresponsive, and award may be made under IFB where there was adequate competition and reasonable prices and where bidder does not allege that there was a deliberate attempt to exclude it from competition.

B-215172 Feb. 7, 1985 85-1 CPD 153
CONTRACTS--MODIFICATION--CHANGE ORDERS--PROPRIETY

Since there is no showing of competitive prejudice relating to contract modifications which may have been intended at the time the contract was awarded, the modifications will not be questioned.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
MODIFICATION

There is no indication that protester was prejudiced by modifications of a contract for the provision of courses of instruction where modifications did not change the type of work to be performed, effect of one modification was so minimal that price remained essentially unchanged, and effect of other modification was to increase the number of hours of instruction and the contract price by reasonably close percentages and there is no indication in the record that this increase in hours of instruction would have resulted in a lower percentage increase in price on the part of the protester. Thus, we will not examine allegation that contract as changed exceeded the scope of the contract on which competition was held.

B-216331.2 Feb. 7, 1985 85-1 CPD 154
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
NOT JUSTIFIED

Agency request that GAO recommendation that canceled RFP be reinstated and award made under that RFP be modified to allow agency to make an award under a new

RFP issued for the same requirement is denied since agency has not shown that reinstatement of canceled RFP is not feasible or that a fair price under the earlier competition would not be obtained.

B-216502 Feb. 7, 1985 85-1 CPD 155

BIDS--LATE--MISHANDLING DETERMINATION--IMPROPER GOVERNMENT ACTION--NOT PRIMARY CAUSE OF LATE RECEIPT--HAND CARRIED DELAY

GAO sustains protest that agency improperly accepted a late bid. Acceptance is proper only where the government's improper action is the paramount cause of the lateness, and the rule does not apply if the bidder has not followed instructions for delivery set forth in a solicitation. The fact that a government employee may have contributed to the lateness in some minor way does not affect this result.

B-216508 Feb. 7, 1985 85-1 CPD 156

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION-- TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW

GAO will not object to the award of a contract under a request for proposals (RFP) to the higher priced offeror receiving a higher technical evaluation if the evaluation is reasonable and in accordance with the evaluation criteria in the RFP.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES-- TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest that procurement should have been formally advertised instead of negotiated is untimely where filed after the closing date for receipt of initial proposals.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY

Certificate of competency (COC) procedures generally do not apply when a small business firm's offer in a negotiated procurement is found technically deficient relative to other offers, since the COC program is reserved for reviewing nonresponsibility matters, not the comparative evaluation of technical proposals.

B-216508 Feb. 7, 1985 85-1 CPD 156 - Con.
FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS OF
AGENCIES, ETC. OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE
DISCLOSURE

GAO has no authority to determine, in connection with
a bid protest, what information must be disclosed by
government agencies. The protester's recourse,
if it believes information has been withheld improperly,
is to pursue the disclosure remedies provided by the
Freedom of Information Act.

B-216533 Feb. 7, 1985 85-1 CPD 157
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest is dismissed where protester failed within
the required 10-working-day period to submit comments
on the agency report or to request consideration of
the protest without comment submission.

B-216987 Feb. 7, 1985 85-1 CPD 158
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED

Bidder's failure to bid on required alternate item
which was selected for award by procuring activity
renders bid nonresponsive.

B-217038.2 Feb. 7, 1985 85-1 CPD 159
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Protester is not an interested party to contest re-
jection of its bid as nonresponsive since, if protest
were upheld, protester would not be in line for award.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Protest based on potential awardee's possible use
of protester's employees and of proprietary infor-
mation gained from those employees is essentially
dispute between private parties which is not for
consideration under GAO Bid Protest Procedures.

B-217323 Feb. 7, 1985 85-1 CPD 160
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest alleging that apparent low bidders are nonresponsive is dismissed as moot since agency canceled solicitation.

B-217456 Feb. 7, 1985 85-1 CPD 161
CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE

A protest that no award has been made after the bid acceptance date and an extension of that date have passed, where protester's bid is still pending by reason of further extensions, is premature and will not be considered.

B-217515, B-217516 Feb. 7, 1985 85-1 CPD 162
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

When small business is found to be nonresponsive and the Small Business Administration refuses to issue a certificate of competency, GAO will not review this refusal unless the protester makes a prima facie showing of bad faith or demonstrates that information vital to the nonresponsibility determination was not considered.

B-218012.2 Feb. 7, 1985 85-1 CPD 163
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
WALSH-HEALEY ACT

While protester requests reconsideration of dismissal because it argues that protest was timely filed, protest was dismissed because challenges to the status of a firm as a regular dealer or manufacturer under the Walsh-Healey Act are for review by the contracting agency, the Small Business Administration, and the Department of Labor, not GAO.

B-218016 Feb. 7, 1985 85-1 CPD 164
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

Under its Bid Protest Regulations, GAO considers the propriety of a contract award or proposed contract award and not, as here, general allegations that an agency may act improperly with regard to unspecified future procurements.

B-215910 Feb. 8, 1985 85-1 CPD 165
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY

Protest against a solicitation requirement for dual piston ejector units for bomb racks is denied where the agency reasonably concluded that the protester's single piston equipment presented an unacceptable technical risk.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMBIGUOUS

Where a solicitation paragraph entitled "Specific Performance Requirements" incorporates by reference requirements from another specification which are clearly design requirements, the protester's interpretation of the requirements as performance requirements is unreasonable. The mislabeling of the design requirements as performance requirements does not change their essential nature.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest that a solicitation specification was a performance rather than a design requirement is timely even though it was not filed prior to the closing date for receipt of proposals. The basis of protest was not apparent from the solicitation and did not arise until the protester's proposal was rejected and the protester became aware that the agency interpreted the requirement differently than it did.

B-216480 Feb. 8, 1985 85-1 CPD 166
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF
COMPETITION

Under regulations covering Small Business-Small Purchase Set-Asides, a contracting officer may limit a solicitation over \$1,000 to one source if only that source is reasonably available and it is impractical to obtain competition.

Under regulations covering Small Business-Small Purchase Set-Asides, a contracting officer may purchase on an unrestricted basis if there is no reasonable expectation of obtaining quotations from two or more competitive small businesses.

PURCHASES--SMALL--PROTESTS--CONSIDERATION BY GAO

Since the purpose of the small purchase procedures is to minimize administrative costs, a contracting officer is given broad discretion with respect to making small purchases. The GAO therefore will only review protests against an agency's approach to defining the field of competition and will not question such determinations unless it is shown that the contracting officer acted without a reasonable basis.

B-216811 Feb. 8, 1985 85-1 CPD 167
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
REASONABLE BASIS--CHANGED CONDITIONS, NEEDS, ETC.

Agency decision to resolicit requirement after termination of a contract due to procurement irregularities, rather than to reopen negotiations with original offerors, is reasonable in light of agency's unrefuted need to change specification and evaluation criteria.

B-218051 Feb. 8, 1985 85-1 CPD 168
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--COMPUTATION OF TIMELINESS--PRESIDENTIAL
INAUGURATION DAY

Inauguration Day is a working day of the federal government generally, and thus will be counted as

a working day in considering whether a protest has been timely filed.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest is dismissed as untimely then not filed within 10 working days after protester learned protest basis.

*B-218054 Feb. 8, 1985 85-1 CPD 169
BIDS--ACCEPTANCE TIME LIMITATION--INSERTION OF DIFFERENT
TIME BY BIDDER*

Agency properly rejected late modification from bidder where initial bid offered a 60-day bid acceptance period rather than the 90-day minimum period required by the solicitation.

BIDS--INVITATION FOR BIDS--CANCELLATION

Determination of whether to cancel a solicitation and readvertise is a matter primarily within the discretion of the administrative agency and will not be disturbed in the absence of clear proof of abuse of discretion.

BIDS--RESPONSIVENESS--LOW PRICE OF BID NOT A FACTOR

A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that solicitation provisions are either ambiguous or unreasonable is untimely since the protest involves alleged improprieties apparent prior to bid opening, but was not filed before that date with either contracting agency or GAO as required by Bid Protest Regulations.

B-218072 Feb. 8, 1985 85-1 CPD 170
TIMBER SALES--DEFAULT--DEFAULTING PURCHASER--EXCLUSION FROM
BIDDING ON RESALE

Exclusion of defaulted contractor from bidding on resale of defaulted timber sales contract is not improper since such action is specifically permitted by Forest Service regulations which have been upheld by the courts and by GAO.

B-218084 Feb. 8, 1985 85-1 CPD 171
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION

GAO will not consider protest against small business set-aside where protester does not allege legal or factual grounds for challenging the set-aside decision.

B-211082.3 Feb. 11, 1985 85-1 CPD 173
CONTRACTS--AWARDS--VALIDITY

Sole-source award of contract to supply prototype antenna system is reasonable where proposed antenna is the only one tested that can meet agency requirements; awardee owns data rights; and protester's offer to supply derivative of existing antenna does not meet solicitation requirements, including one for a "working model" antenna.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

If potential suppliers are not treated fairly when government is ascertaining its requirements through testing, this may reflect on the reasonableness of the agency's determination of its actual needs. However, GAO will deny a protest alleging that offerors were subjected to different tests when tests on equipment being offered were comparable.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against proposed sole-source award, filed after closing date for receipt of proposals, is timely where

agency invites protester to submit information showing that it can meet solicitation requirements before closing date and protest is filed within 10 working days of date when agency notifies protester that it does not meet requirements.

Protest alleging that test to assess whether protester's equipment can meet agency requirements was not fair and that sufficient data was not provided to protester, filed after the test, is untimely, since protester knew protest basis prior to test. However, protest against agency's analysis of test results is timely when filed within 10 working days of when protester is advised of such results. Doubts as to timeliness of protest concerning test of proposed sole-source awardee's equipment are resolved in protester's favor.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging undue restrictiveness of requirement for "working model" antenna, included in a solicitation, is untimely when filed after closing date for receipt of proposals.

Protest alleging that certain work specified in sole-source solicitation should have been procured competitively is untimely when filed after closing date for receipt of proposals.

*B-216084.2 Feb. 11, 1985 85-1 CPD 179
BIDS--LATE--HAND CARRIED DELAY--ACCEPTANCE OF BID*

A hand-carried bid which is deposited in the designated bid box on time, but does not reach the bid opening room before bids are opened because the bid depository was not checked on schedule, is not a late bid and may be considered. Distinguishes B-184155, Feb. 26, 1976.

B-216281 Feb. 11, 1985 85-1 CPD 175

BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
LOW BID IN EXCESS OF GOVERNMENT ESTIMATE

Agency's rejection of sole responsive bid on the basis of unreasonable price, resulting in cancellation of the solicitation, is proper when the bid price is significantly higher than either previous price for the same item or the government's estimate.

BIDS--INVITATION FOR BIDS--INTERPRETATION--ORAL EXPLANATION

Bidders rely on oral advice at their own risk where such oral advice conflicts with the clear language of the solicitation.

BIDS--PRICES--REDUCTION PROPRIETY--SMALL BUSINESS SET-ASIDES

Negotiation with sole bidder for reasonable prices after small business restricted advertisement resulted in unreasonable bid is not authorized by law.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest based upon alleged improprieties in invitations for bids filed after bid opening is untimely.

B-216505 Feb. 11, 1985 85 1 CPD 176

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF
COMPETITION

Where the contracting officer has a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices, GAO will not object to the decision to set aside a procurement for small business.

B-216505 Feb. 11, 1985 85-1 CPD 176 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
SUBCONTRACTOR, SUPPLIER, ETC. SIZE STATUS

A small business may subcontract with a large business for a portion of a contract that has been set aside without endangering its status as small; however, it may not transfer that status to a joint venture composed of itself and a large business for the purpose of competing for set-asides.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

The GAO will not review questions of small business size status, since the Small Business Administration has exclusive jurisdiction in this matter.

B-216624.2 Feb. 11, 1985 85-1 CPD
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Prior decision is affirmed on reconsideration where the protester has not shown any error of fact or law which would warrant reversal of the decision.

B-216651 Feb. 11, 1985 85-1 CPD 178
CONTRACTS--NEGOTIATION--NATIONAL EMERGENCY AUTHORITY--
EXPANSION OF MOBILIZATION BASE

Participation in an Industrial Mobilization Base does not guarantee award of any of an agency's current requirements.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DELIVERY CAPABILITY

Award of a sole-source contract is justified when there is only one producer which can meet the government's delivery schedule requirements.

B-218100 Feb. 11, 1985 85-1 CPD 180

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against alleged defective specifications contained in step-one of two-step formally advertised procurement filed after the closing date for receipt of step-one technical proposals is untimely. Later discovered information supporting protest allegation does not provide independent timely basis of protest or otherwise excuse failure to file protest timely under Bid Protest Regulations.

B-218110.2 Feb. 11, 1985 85-1 CPD 181

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ELIGIBLE PARTY REQUIREMENT

Incumbent on contract which was subject of recommendation for corrective action in prior decision is not eligible to request reconsideration of decision where contractor was on notice of protest, was offered opportunity to comment, and did not participate in protest proceedings. Arguments raised in request for reconsideration should have been made in initial proceeding.

B-214079.2 Feb. 12, 1985 85-1 CPD 182

CONTRACTORS--RESPONSIBILITY--DETERMINATION--CURRENT
INFORMATION

Where bid has been improperly excluded from award and, as a consequence of exclusion, bidder's responsibility has never been formally assessed, appropriate approach is to assess bidder's responsibility based on the most current information available to the contracting officer. Although this approach is valid, it will not be applied in protested procurement since termination of existing contract is not feasible.

*B-214079.2 Feb. 12, 1985 85-1 CPD 182 - Con.
CONTRACTS--TERMINATION--NOT IN GOVERNMENT'S BEST INTEREST*

It is not in the government's interest to terminate a \$6 million, improperly awarded contract where termination costs are estimated to be more than \$1.6 million.

*B-214699.2 Feb. 12, 1985 85-1 CPD 183
BONDS--PAYMENT--MILLER ACT COVERAGE--SUBCONTRACTORS, ETC.*

In recognition of their otherwise limited remedies, the Miller Act, 40 U.S.C. 270a-270f (1982), was passed in order to protect laborers and suppliers where a prime contractor fails to meet its obligations to them.

CONTRACTS--PAYMENTS--PROGRESS--TITLE PASSAGE

Protester has not shown that it was unreasonable for the agency, in order to protect the government from the liens of unpaid subcontractors or from other encumbrances, to require a prime contractor to provide satisfactory evidence of title to material stored on-site before it can be considered in calculating progress payments. Although liens cannot attach to the property of the United States and a subcontractor, in privity only with the prime contractor, normally cannot recover directly from the United States for amounts owed it by the prime, some courts have indicated that in certain circumstances the claims of unpaid subcontractors may be satisfied at the expense of the government.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ADDITIONAL EVIDENCE SUBMITTED--
AVAILABLE BUT NOT PREVIOUSLY PROVIDED TO GAO*

GAO's Bid Protest Procedures, 4 C.F.R. part 21 (1984), do not permit a piecemeal presentation of evidence, information or analyses. Where a party submits in its request for reconsideration an argument that it could have presented at the time of the protest but did not, this argument does not provide a basis for reconsideration.

B-214699.2 Feb. 12, 1985 85-1 CPD 183 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Arguments which amount to a reiteration of those previously considered in deciding the initial protest to GAO do not provide a basis for reconsideration.

B-216036 Feb. 12, 1985 85-1 CPD 184
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed more than 10 working days after protester learned of initial adverse agency action (award to another firm) on protest to agency is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.

B-216990 Feb. 12, 1985 85-1 CPD 187
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Where adequate competition and reasonable prices are obtained by the government, an offeror bears the risk of nonreceipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude an offeror from participating in the procurement.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where a protester does not submit any evidentiary support for its bare assertion that specifications are "written around" a competitor's product, the protester fails to meet its burden of proof.

B-217010 Feb. 12, 1985 85-1 CPD 188
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PERSONNEL AVAILABILITY--REASONABLENESS

Evaluation of offeror's proposed key personnel, who were changed after award, is not objectionable when offeror provided firm letters of commitment and submitted names in good faith.

B-217010 Feb. 12, 1985 85-1 CPD 188 - Con.
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Whether offeror substituted key personnel immediately following contract award in a manner inconsistent with the requirements of the contract is a matter of contract administration which is not for GAO review.

B-217138 Feb. 12, 1985 85-1 CPD 189
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--FAILURE TO REFER TO
SBA

A contracting officer may not reject a small business firm's responsive bid based on a preaward survey finding that the firm will not furnish products of a small business manufacturer without first referring the matter to the Small Business Administration.

B-218104 Feb. 12, 1985 85-1 CPD 190
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

GAO will not review the Small Business Administration's (SBA) refusal to issue a certificate of competency, absent a showing of possible fraud or bad faith on the part of government officials or allegations that SBA did not follow its own regulations or did not consider material information, since the Small Business Act gives SBA conclusive authority to determine all elements of small business responsibility.

B-215557 Feb. 13, 1985 85-1 CPD 192
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--
NOTIFICATION OF UNSUCCESSFUL OFFERORS

Failure to notify offeror before award of the rejection of its proposal was a procedural deficiency which does not affect the validity of the award.

B-215557 Feb. 13, 1985 85-1 CPD 192 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REVISIONS--
EVALUATION

Offeror was not prohibited from substantially revising its proposal in its best and final offer, but it assumed the burden of establishing that the revised proposal was technically acceptable.

CONTRACTS--NEGOTIATION--REOPENING--NOT REQUIRED

Obtaining additional information essential to determine the acceptability of a proposal requires reopening negotiations, and agency did not abuse its discretion in failing to do so after receiving best and final offers.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Disagreement with agency determination that an offeror's proposal is unacceptable is insufficient in itself to establish that the determination was unreasonable.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has not proven its case when the only evidence on an issue of fact is conflicting statements of the agency and the protester.

B-216530 Feb. 13, 1985 85-1 CPD 193
BIDS--INVITATION FOR BIDS--CLAUSES--MANDATORY--OMISSION
EFFECT

Bid accompanied by letter from bidder which deletes "Subcontracts Under Fixed-Price Contracts" clause is nonresponsive because deletion of this mandatory clause is a material deviation that restricts the movement's rights and eliminates the bidder's responsibility; any contract award would not be the contract offered all bidders.

B-216530 Feb. 13, 1985 85-1 CPD 193 - Con.
BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--
ACCEPTANCE NOT AUTHORIZED

A bidder is not permitted to make its nonresponsive bid responsive after bid opening by removing an exception to a mandatory contract clause because such action would be tantamount to permitting the bidder to submit a new bid.

B-216825 Feb. 13, 1985 85-1 CPD 194
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Decision to cancel solicitation was reasonable where the specifications were ambiguous and under circumstances provided a compelling reason to cancel the solicitation.

BIDS--INVITATION FOR BIDS--CANCELLATION--RESOLICITATION--
REVISED SPECIFICATIONS

Oral resolicitation after cancellation of invitation for bids is not objectionable when record indicates use of such procedures was justified on basis of urgency.

B-217170-O.M. Feb. 13, 1985
CONTRACTS--LABOR STIPULATIONS--WAGE UNDERPAYMENTS--
VOLUNTARY REMITTENCE BY CONTRACTORS--DISBURSEMENT

The Department of Labor determined that two employees of a contractor did not receive the prevailing wages required in accordance with the Davis-Bacon Act, 40 U.S.C. 276a (1982). Since the contractor agreed to the payment of the available withheld funds to these employees, payment of these funds should be made to them. Since there are not sufficient funds to pay the full amount due these wage claimants, the amount available should be distributed on a pro rata basis between them.

B-218035 Feb. 13, 1985 85-1 CPD 195
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest alleging that low bidder is nonresponsive for failure to execute affirmative action and equal employment opportunity certifications is dismissed, since compliance with these programs concerns the bidder's responsibility and GAO generally will not review a contracting officer's affirmative determination. Moreover, agency may waive failure to execute the certifications as a minor informality or irregularity under FAR 14.405(f).

B-218036 Feb. 13, 1985 85-1 CPD 224
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

GAO will not consider a protest filed more than 10 working days after the basis for it is known.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION

GAO will not consider the issue of whether an offeror meets experience and management requirements included in a request for proposals, since this is not a "significant issue" within the context of an exception to the timeliness requirements of GAO Bid Protest Regulations.

B-210435.2 Feb. 14, 1985 85-1 CPD 196
FOREIGN GOVERNMENTS--DEFENSE ARTICLES AND SERVICES--ARMS
EXPORT CONTROL ACT--FOREIGN MILITARY SALES PROGRAM--
COMPETITION REQUIREMENT INAPPLICABILITY--SOLE-SOURCE AWARD
REQUESTED

The Army properly may specify sole sources for items being purchased to implement a foreign military sale (FMS), where the FMS customer requests the particular sources.

B-215230 Feb. 14, 1985 85-1 CPD 197
BIDS--INVITATION FOR BIDS--CLAUSES--INSPECTION FOR SERVICES--
PRICE REDUCTION v. REPERFORMANCE PROVISIONS--RECONCILABILITY

Provision in invitation for bids for service contract which permits the government to deduct amounts from the contractor's payments for unsatisfactory services does not conflict with any reperformance rights of the contractor. Although the standard "Inspection of Services" clause permits the government to require reperformance at no cost to the government, the protester has failed to show that defective services may be reperformed without the government receiving reduced value.

CONTRACTS--DAMAGES--LIQUIDATED--ACTUAL DAMAGES v. PENALTY--
PRICE REDUCTIONS--REASONABLENESS

Performance Requirements Summary provisions in invitation for bids for service contract, which permit the government to deduct from the contractor's payment an amount representing the value of several service tasks where a random inspection reveals a defect in only one task and permits deduction for defective performance of tasks not specifically assigned a value where stated tasks under damage provision already total 100 percent of the contract price, impose an unreasonable penalty.

CONTRACTS--PERFORMANCE--DEFECTS--ADMINISTRATIVE REMEDIES

Requirement that contractor provide written notification of corrective action to be taken in response to government finding of deficient performance is not advance contractual agreement to the deficiency alleged by agency. Requirement does not preclude contractor from challenging the agency's finding that a deficiency has occurred under the contract disputes clause.

B-215830.2, B-215830.3 Feb. 14, 1985 85-1 CPD 198
BIDS--EVALUATION--CRITERIA--UNDISCLOSED--NOT PREJUDICIAL TO
PROTESTER

Although an invitation for an indefinite-quantity, requirements contract failed to state expressly that each unit price would be multiplied by the estimated quantity for evaluation purposes, award may be based on such an evaluation since the government's needs will be met and no bidder has made a persuasive showing that it would be prejudiced.

B-216989 Feb. 14, 1985 85-1 CPD 199
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS

Bid which constitutes offer to furnish a drill with a torque capacity of 6,000 ft.-lbs. at 27 revolutions per minute (RPM) instead of the required capacity of 5,800 ft.-lbs. at 50 RPM, took exception to a material requirement of the solicitation and was therefore properly rejected as nonresponsive.

BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--
ACCEPTANCE NOT AUTHORIZED

Agency acted improperly in accepting a nonresponsive bid based on the bidder's explanation obtained after bid opening because the agency may not seek such a clarification after opening, as a bidder's intention to comply with the solicitation requirements must be determined from the bid itself without resort to such explanations.

B-217482 Feb. 14, 1985 85-1 CPD 200
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELLED

A protest is dismissed as academic where the solicitation on which the protest is based has been canceled.

B-218127 Feb. 14, 1985 85-1 CPD 202
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Contention after bid opening that solicitation should not have been set aside for small business because it allegedly violates the provision in 15 U.S.C. 644(a) that a "fair proportion" of total government purchases and contracts be placed with small business concerns is untimely.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PROPRIETY

The fact that only one acceptable offer was received in response to a small business set-aside solicitation does not affect the propriety of the set-aside.

B-216561 Feb. 15, 1985 85-1 CPD 203
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PROPRIETY

It is proper for an agency to refuse to consider one firm's offered maintenance warranty in evaluating offers, where offerors never were advised that such warranties would be an evaluation factor; award may not be based on criteria not made known to prospective offerors.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

An allegation that using equipment purchased from two different vendors will result in system integration problems is without merit where the agency found the equipment could be integrated and the protester presents no evidence to the contrary.

B-217042 Feb. 15, 1985 85-1 CPD 204
CONTRACTS--COMPETITIVE SYSTEM--RESTRICTIONS ON COMPETITION--
GEOGRAPHIC

Federal procurement policy requires that competition for government contracts be maximized, providing

qualified sources an equal opportunity to compete. Geographic restriction is unreasonable where the record does not establish that only the designated area will meet the agency's actual minimum needs.

*B-218093 Feb. 15, 1985 85-1 CPD 205
BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY
UNBALANCED BIDS"--MATERIALITY OF UNBALANCE*

Mathematically unbalanced bid may be accepted. Only when a bid is materially unbalanced (that is, because a solicitation estimate of the anticipated quantity of work is not a reasonably accurate representation of actual anticipated needs, acceptance of an unbalanced bid would provide no assurance that the award would result in the lowest cost to the government) must the bid be rejected.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

An allegation that an unrealistically low bid is due to the bidder's failure to understand what may be required under the contract involved the agency's affirmative determination of responsibility which GAO will not review. In addition, the fact that an unreasonably low or below-cost bid suggests the possibility of a "buy-in" does not provide any basis on which to submit a protest.

*B-218161, B-218161.2 Feb. 15, 1985 85-1 CPD 206
CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST
COMPARISON--EXHAUSTION OF ADMINISTRATIVE REMEDIES*

GAO will not consider a protest against the propriety of a cost comparison performed pursuant to OMB Circular A-76 when the protester has not exhausted available administrative review procedures.

*B-215505 Feb. 19, 1985 85-1 CPD 207
CONTRACTS--DAMAGES--MEASURE--ANTICIPATED PROFITS*

In general, anticipated profits are not recoverable even in the presence of wrongful government action.

Specifically, GAO knows of no situation where anticipated profits may be recovered when the underlying claim is based upon equitable, rather than legal, principles.

INTEREST--CLAIMS--AGAINST UNITED STATES--RULE

Interest is not recoverable against the United States unless it is expressly authorized by statute or by contract. This rule thus does not permit the payment of interest when the claimant has been allowed a partial recovery from the government under the equitable theory of quantum meruit.

*B-215922.3 Feb. 19, 1985 85-1 CPD 208
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision is affirmed on reconsideration where no error of fact or law has been shown.

*B-216615 Feb. 19, 1985 85-1 CPD 211
BIDS--RESPONSIVENESS--"NO-CHARGE", ETC. NOTATIONS*

Bids which contain "N/C" (no charge) or similar notations instead of dollar prices for certain items in the schedule are responsive, because such notations clearly equate with zero dollar costs, and thereby indicate the bidder's affirmative intent to be obligated to provide the items at no charge to the government.

*B-213452.3 Feb. 20, 1985 85-1 CPD 213
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Burden is upon protester to prove conduct of procurement was deficient, and decision is affirmed where protester has not met its burden of proof.

B-218028 Feb. 20, 1985 85-1 CPD 214
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Decision is affirmed where protester has not established that it was based on erroneous interpretation of fact or law.

B-218159 Feb. 20, 1985 85-1 CPD 215
CONTRACTS--PROTESTS--ADMINISTRATIVE ACTIONS--ADVERSE ACTIONS--
WHAT CONSTITUTES

When protest is filed initially with contracting agency prior to bid opening, agency's opening of bids without responding to the protest constitutes adverse agency action on the protest, so that a subsequent protest to GAO must be filed within 10 working days thereafter.

B-215480 Feb. 21, 1985 85-1 CPD 216
CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

Protester has not met its burden of affirmatively proving that a solicitation was biased in favor of the awardee due to actions by an agency employee when the only support for this contention is that the employee later was hired by awardee.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest objecting to the provisions of a solicitation is untimely when not filed before the date set for receipt of initial proposals.

B-216645 Feb. 21, 1985 85-1 CPD 218
BIDS--COLLUSIVE BIDDING--ALLEGATIONS UNSUPPORTED BY EVIDENCE

Allegation of collusion among bidders offering brand name product in brand name or equal procurement is denied where no specific evidence is submitted to support allegation. However, if protester has specific

information it should be presented to the contracting officer for possible forwarding to the Department of Justice in accordance with the Federal Acquisition Regulation.

BIDS--RESPONSIVENESS--BRAND NAME PROCUREMENT--COMPLIANCE REQUIREMENTS

Bid proposing equal product in response to brand name or equal solicitation is nonresponsive because it failed to include sufficient descriptive data to establish that product met one of the salient characteristics specified in the solicitation.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest allegation is untimely where basis for allegation could have been discovered at time of award but protest was not filed until 3 months after award.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Contention that a specification for brand name or equal product unduly restricted competition will not be considered since it involves an alleged defect apparent from the face of the solicitation and the protest was not filed prior to bid opening as required by Bid Protest Procedures.

*B-217107 Feb. 21, 1985 85-1 CPD 219
BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--SUSTAINED BY RECORD*

Resolicitation of procurement is not recommended since there is no evidence of unfairness or unreasonableness concerning the protester's competing for the procurement and adequate competition and reasonable prices were obtained.

B-217107 Feb. 21, 1985 85-1 CPD 219
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the parties to the telephone conversation in which the protester made its bid are in total disagreement as to whether a prompt payment discount was offered, the protester has not met its burden of affirmatively proving its case.

B-217122, B-217126 Feb. 21, 1985 85-1 CPD 220
CONTRACTS--ARCHITECT, ENGINEERING, ETC. SERVICES--PROCUREMENT
PRACTICES--BROOKS BILL APPLICABILITY--PROCEDURES

GAO's review of agency selection of an architect-engineer (A-E) contractor is limited to examining whether the selection is reasonable. It is not GAO's function to determine the relative merit of the submissions of A-E firms. We will question the agency's judgment only if it is shown to be arbitrary.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

GAO will not review a determination whether to contract under section 8(a) of the Small Business Act unless the protester presents prima facie evidence of fraud or bad faith on the part of procurement officials.

B-217552 Feb. 21, 1985 85-1 CPD 221
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELLED

Protest is dismissed where the underlying solicitation has been canceled and the cancellation renders the protest academic.

B-218081 Feb. 21, 1985 85-1 CPD 222
BIDS--ACCEPTANCE TIME LIMITATION--FAILURE TO COMPLY

Protest that contracting agency failed to award a contract within bidder's initial bid acceptance period is dismissed since the Federal Acquisition

Regulation does not impose a mandatory requirement to make award within the initial bid acceptance period and delay in award was due to protest being filed.

B-218102 Feb. 21, 1985 85-1 CPD 223
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest is dismissed because protester filed protest with contracting agency more than 10 days after the basis of protest was known.

B-215102.2 Feb. 22, 1985 85-1 CPD 225
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELLED

Protest against specifications is academic and will not be considered by GAO where agency cancels solicitation containing the specifications.

B-216353 Feb. 22, 1985 85-1 CPD 226
BIDS--EVALUATION--AGGREGATE v. SEPARABLE ITEMS, PRICES, ETC.--
FAILURE TO BID ON ALL ITEMS

A bidder's failure to bid on an alternate deductive item which is among the items selected for award renders the bid ineligible for award.

BONDS--BID--FAILURE TO FURNISH--ONE ACCEPTABLE BID--WAIVER
OF BID BOND REQUIREMENT

In procurement substantially funded with Department of Housing and Urban Development financial assistance which requires compliance with federal contracting requirements as a condition of the assistance, local housing authority may waive complainant's failure to submit required bid guarantee if bid is the only eligible one received.

B-216353 Feb. 22, 1985 85-1 CPD 226
CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Mere allegation of preferential treatment of another bidder, without evidence in record, constitutes speculation and will not satisfy the protester's burden of affirmatively proving its case.

B-218140 Feb. 22, 1985 85-1 CPD 227
BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS SUBMITTED AT BID OPENING

Bid on total small business set-aside rejected as nonresponsive because bidder indicated that not all supplies to be furnished will be the product of a small business concern may not be cured or defect waived as minor informality since responsiveness must be determined from material available at bid opening and postopening explanations cannot be considered to correct a nonresponsive bid.

BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--SMALL BUSINESS REQUIREMENTS

Bid on total small business set-aside from a small business concern which indicates that not all supplies to be furnished will be the product of a small business concern properly is rejected as non-responsive because bidder would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.

B-215081 Feb. 25, 1985 85-1 CPD 228
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Allegation of vagueness and ambiguity is based on unreasonable interpretation of solicitation where requirement is clearly stated. Allegation that solicitation was defective, requiring recompetition, because workload estimates were allegedly not based on "best available data" and included requirement for "error-free" production of small part of word processing requirement, is denied where more current information was

provided and there is no evidence protester, ninth low bidder and former incumbent, was prejudiced by either requirement.

B-216264, et al. Feb. 25, 1985 85-1 CPD 229
CONTRACTS--FEDERAL SUPPLY SCHEDULE--SPECIFICATIONS--MINIMUM
NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION

Protests asserting that an agency acted improperly in requesting and obtaining waivers from use of the protester's mandatory single-award Federal Supply Schedule (FSS) contract for portable desk top recorders and transcribers are denied, since the protester's items are not compatible with the central dictation and the Federal Acquisition Regulation specifically provides that a mandatory-user agency may request waivers from use of an FSS contract when the items on that contract will not meet its minimum needs.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
SCOPE OF REVIEW OF AGENCY ACTIONS

The internal policy decisions of contracting agencies and the underlying reasons for them are generally not subject to review under GAO's bid protest function, which rather addresses whether specific procurement actions have complied with statutory, regulatory, and other legal requirements.

B-216291 Feb. 25, 1985 85-1 CPD 230
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELLED

Where during the pendency of protest procuring agency admits error in calculating government estimate, resolicits requirement, and intends to terminate procurement which used erroneous estimate, protest has become moot. Claim for bid preparation costs and legal fees incurred in pursuing protest is denied.

*BIDS--EVALUATION--DELIVERY PROVISIONS--GUARANTEED SHIPPING
WEIGHT--BIDDER'S UNDERSTATEMENT*

Contention that successful bidder provided inaccurate low guaranteed maximum shipping weight and dimensions will not affect propriety of award, even if allegations were correct. Practice of bidders intentionally using guaranteed shipping weight and dimensions which are less than actual weight and dimensions is considered a permissible alternative to reducing the price for the procured item.

BIDS--EVALUATION--ESTIMATES--PROPRIETY

IFB specifically provided government's estimated weights and dimensions for evaluation of transportation costs and IFB specifically stated that such estimate would be used for evaluation purposes if the bidder failed to provide such information. Under these circumstances, GAO rejects bidder's claim that its omission of information on weight and dimensions should have been evaluated as an offer to transport items without cost to the government.

*BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO
ACKNOWLEDGE--WAIVED AS MINOR INFORMALITY*

Bidder's failure to acknowledge an amendment to an IFB was a minor informality or irregularity which could be waived or cured where the amendment had no effect on quantity, quality or delivery and would slightly decrease price if it affected it at all.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Bidder's allegation that Air Force used unrealistic maximum guaranteed dimensions in IFB for evaluation of transportation costs is untimely where the objections were first raised after bid opening.

B-216978 Feb. 25, 1985 85-1 CPD 232
BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS--BOND
REQUIREMENTS

Although determination of nonresponsibility was based on a not totally proper computation of surety's outstanding obligations, where discrepancy was minor and would not have led to different conclusion if corrected, GAO will not question determination.

Contracting officer has discretion to decide how much weight to accord surety's outstanding bond obligations in determining acceptability.

BONDS--BID--SURETY--AFFIDAVIT (STANDARD FORM 28)--
DEFICIENCIES--NONDISCLOSURE OF OTHER BOND OBLIGATIONS

Failure to complete item 10 in affidavit of individual surety, which required the surety to disclose all other bond obligations, may be considered in determining the acceptability of the surety.

BONDS--BID--SURETY--NET WORTH

Net worth of individual sureties on a bid bond need only be in the amount of the difference between the price stated in the bid and the price stated in the next higher acceptable bid notwithstanding the invitation for bids' requirement for a bid bond that was 20 percent of the bid price.

CONTRACTORS--RESPONSIBILITY--TIME FOR DETERMINING

Responsibility of a surety may be established any time before award.

B-217101 Feb. 25, 1985 85-1 CPD 233
BIDS--PREPARATION--COSTS--RECOVERY

There is no legal basis for a bidder improperly rejected as nonresponsive to be given an award under another contract--the original contract having been completed--or to recover anticipated profits. Bid preparation costs may be awarded, however, since but for the improper action of the agency, the firm would have received the award.

*B-217101 Feb. 25, 1985 85-1 CPD 233 - Con.
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

Where clause requiring listing of brand name of offered product in "Brand Name or Equal" procurement is omitted from the solicitation, bid that did not list brand name should not have been rejected as nonresponsive since contracting agency admits that award to that firm will meet the government's needs, and no other bidder would be prejudiced.

*B-217152 Feb. 25, 1985 85-1 CPD 234
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO
ACKNOWLEDGE--BID NONRESPONSIVE*

Bid which fails to acknowledge amendment requiring upward wage rate revisions and containing several material revisions and an addition to bidding schedule was properly rejected as nonresponsive.

*BIDS--INVITATION FOR BIDS--AMENDMENTS--NONRECEIPT--BIDDER'S
RISK--BIDDER EXCLUSION NOT INTENDED*

Risk of nonreceipt of solicitation amendment rests with bidder where failure to receive amendment is not due to a deliberate effort by contracting agency to exclude bidder from competing.

*B-217365 Feb. 25, 1985 85-1 CPD 235
BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS
SUBMITTED AT BID OPENING*

Responsiveness must be determined from material available at bid opening, and post-opening explanations cannot be considered to correct a nonresponsive bid.

*BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
INFORMATION--SMALL BUSINESS CONCERNS--END PRODUCT CONTRIBUTION*

A bid submitted in response to a total small business set-aside, which failed to indicate the bidder would furnish supplies manufactured by a small business concern, was properly rejected as nonresponsive.

*B-218003.2 Feb. 25, 1985 85-1 CPD 236
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after protester learned of initial adverse action--agency determination that the change in the specifications requested by the protester was not considered practical--in response to protest filed with agency, is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.

*B-218010.2 Feb. 25, 1985 85-1 CPD 237
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

Protest challenging offeror's removal from agency's approved source list is dismissed as premature where preliminary issue--offeror's status under Walsh-Healey Act--has not yet been resolved.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
WALSH-HEALEY ACT*

Protest alleging that Small Business Administration (SBA) determination of offeror's status as regular dealer or manufacturer under Walsh-Healey Act is dispositive of offeror's status as an approved source is denied, since there is no support in Walsh-Healey Act for protester's contention that the SBA determination controls the agency's approved source determination, and, in fact, the two determinations involve different considerations.

*B-218134.2 Feb. 25, 1985 85-1 CPD 238
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision denying complaint concerning procurement under grant is affirmed where complainant only reiterates legal argument already considered and record does not support alleged factual error in original decision.

B-208622.3 Feb. 26, 1985 85-1 CPD 239
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Decision granting proposal preparation costs is affirmed where agency fails to establish in its reconsideration request that the decision was based on errors of law or did not properly take into account all relevant evidence timely presented.

B-217291 Feb. 26, 1985 85-1 CPD 240
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Agency may award to firm which does not have Food and Drug Administration (FDA) permission to market solicited surgical device at the time of award where solicitation provision which requires needed FDA approval does not require that offeror have approval prior to award.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Contention that contractor is supplying nonconforming products is a matter of contract compliance and administration not for review under GAO Bid Protest Procedures.

GENERAL ACCOUNTING OFFICE--JURISDICTION--ADMINISTRATIVE
PROGRAMS REVIEW--AUTHORITY

Determination by Food and Drug Administration that a manufacturer of a surgical device can commercially market its device is not subject to review by GAO.

B-217433 Feb. 26, 1985 85-1 CPD 241
GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965

GAO will not review agency's decision not to include Service Contract Act wage determination in solicitation where question of applicability of act to work covered by solicitation is before Department of Labor for resolution.

B-218223 Feb. 26, 1985 85-1 CPD 242
CONTRACTS--AWARDS--DELAYED AWARDS--PROPRIETY

An agency may delay a contract award to permit the apparent low bidder a reasonable time to cure a problem related to its responsibility.

B-214595.2 Feb. 27, 1985 85-1 CPD 243
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

The protester bears the burden of proof and where the only evidence concerning an issue of fact is the conflicting statements of the protester and the agency, the issue should be resolved in favor of the agency.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Arguments which amount to a reiteration of those previously considered in deciding the initial protest do not provide a basis for reconsideration.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Agency request for reconsideration of protest decision filed more than 10 working days after basis for reconsideration is known is untimely.

B-215979 Feb. 27, 1985 85-1 CPD 244
BIDS--INVITATION FOR BIDS--CLAUSES--INSPECTION OF SERVICES--
PRICE REDUCTION v. REPERFORMANCE PROVISIONS--RECONCILABILITY

GAO finds no merit to protest against terms in solicitation for mess attendant services that provide for inspection by random sampling, payment deductions for defective services, and limitations on reperformance, since the protester has not shown that these terms are unreasonable or unnecessary.

B-216015 Feb. 27, 1985 85-1 CPD 245
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--INFORMATION

Protest that RFP did not provide sufficient information for protester to submit a competitive proposal

sal is denied where the information it requested as necessary is not available to the agency.

*B-216632 Feb. 27, 1985 85-1 CPD 246
CONTRACTS--TERMINATION--PROPRIETY*

Agency's decision to terminate award was justified where award was based on an erroneous evaluation of bids and protester was not entitled to award on item terminated.

*B-216886 Feb. 27, 1985 85-1 CPD 247
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Offer was properly excluded from competitive range for informational deficiencies so material that major revisions and additions would be required to make offer acceptable.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
PROTESTER NOT IN LINE FOR AWARD*

GAO will not consider issue raised by a party that would not be in line for award even if it were to prevail on the issue and that is not otherwise an interested party under Bid Protest Procedures.

*B-217422 Feb. 27, 1985 85-1 CPD 249
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--CONSTRUCTIVE NOTICE OF PROCEDURES*

Although protester alleges that it was not advised of the requirement concerning the time for filing of a GAO protest alleging solicitation improprieties, an untimely protest may not be considered because bidders are on constructive notice of the requirement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protester's alleged conversations with contracting official regarding two alleged solicitation improprieties cannot be viewed as protests to the contracting

agency where conversation on one issue was merely an informational request and was not a protest and the contracting agency denies that conversation on other issue occurred. Accordingly, where protest alleging these solicitation improprieties was filed initially with GAO after bid opening, it is untimely.

*B-218136 Feb. 27, 1985 85-1 CPD 250
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--
EXHAUSTION OF ADMINISTRATIVE REMEDIES*

GAO will not consider a protest against a cost comparison calculation under Office of Management and Budget Circular No. A-76 until the protester has exhausted the contracting agency's administrative review procedures.

*B-218214 Feb. 27, 1985 85-1 CPD 251
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

Protest alleging that agency improperly will deny award to protester is premature and will not be considered.

*B-217375 Feb. 28, 1985 85-1 CPD 252
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Allegation that heat distribution systems should be tested for a low temperature drying capability under prequalification procedures is dismissed where the agency has determined that such testing would restrict competition to one or a few firms; a protester's interest as a beneficiary of more restrictive requirements is not protectable under GAO's Bid Protest Procedures.

*B-218022 Feb. 28, 1985 85-1 CPD
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
POTENTIAL CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.*

A senator is informed that his constituent's protest forwarded to GAO by him will not be considered on the merits because the protester is a supplier, not a bidder, and is thus not an interested party under our regulations. 4 C.F.R. 21.0(a), 21.1(a) and 21.3(f)(10).

B-218052.2 Feb. 28, 1985 85-1 CPD 263
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--COMPUTATION OF TIMELINESS--
PRESIDENTIAL INAUGURATION DAY

Inauguration Day is a working day of the federal government generally and will be counted as a working day in considering whether a protest has been timely filed, unless it is the tenth day of the 10-day filing period.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest is dismissed as untimely when not filed within 10 working days after protester learned protest basis.

B-218060.2 Feb. 28, 1985 85-1 CPD 264
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

When protest initially is filed with the contracting agency before bid opening, opening without agency response is itself initial adverse agency action, and protest to GAO must be filed within 10 working days thereafter.

TRANSPORTATION LAW

February 1985

B-216116 Feb. 12, 1985 85-1 CPD 185
TRANSPORTATION--HOUSEHOLD EFFECTS--RATES

In computing payment to a carrier for shipping household goods, the agency properly applied rates in as industry-wide tender in lieu of higher rates in the carrier's own tender, where the latter provided that the lowest available rates should apply.

B-216117 Feb. 19, 1985 85-1 CPD 431
TRANSPORTATION--HOUSEHOLD EFFECTS--RATES--INDIVIDUAL CARRIERS
v. CARRIER RATE BUREAUS

In computing payment to a carrier for shipping household goods, the agency properly applied rates in an industry-wide tender in lieu of higher rates in the carrier's own tender, where the latter provided that the lowest available rates should apply.

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